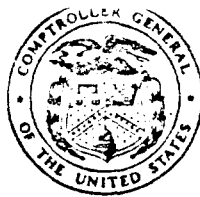


**DECISION****THE COMPTROLLER GENERAL  
OF THE UNITED STATES**

WASHINGTON, D.C. 20548

**FILE:** B-209292**DATE:** February 1, 1983**MATTER OF:** Educational Travel Expenses**DIGEST:**

1. Since entitlement to educational travel expenses under 5 U.S.C. § 5924(4)(B) is limited to travel to and from a university in the United States employee is not entitled to expenses for dependents' travel between his overseas duty station and the Munich, Germany, campus of the University of Maryland.
2. Indebtedness for educational travel expenses erroneously paid under 5 U.S.C. § 5924(4)(B) may not be waived since travel and transportation expenses and allowances are specifically excluded from the waiver authority of 5 U.S.C. § 5584. The fact that section 5924 is entitled "Cost-of-living allowances," does not change the character of the travel expense payments authorized by that section.

We have been asked by a finance and accounting officer to determine whether a Department of Defense employee stationed overseas was properly paid travel expenses under 5 U.S.C. § 5924(4)(B) in connection with his dependents' travel to and from the Munich, Germany, campus of the University of Maryland. If the travel expense payments were not proper, we are asked whether the erroneous payments may be waived under 5 U.S.C. § 5584. Finally, if waiver is found to be inappropriate, we are asked to consider reporting the case to Congress as a meritorious claim under 31 U.S.C. § 3702(d) (formerly 31 U.S.C. § 236). Since travel costs are payable under 5 U.S.C. § 5924(4)(B) only for dependents' travel to attend school in the United States, the employee was improperly reimbursed for his children's travel to and from Munich. Erroneous payments of travel expenses may not be waived. Further, we do not find that the claim contains such elements of legal liability or equity as would warrant submission to Congress as a meritorious claim.

The case submission indicates that the employee concerned was completing an overseas assignment. Upon being

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asked to serve an additional tour of duty in Europe, the employee specifically asked his administrative support office if he would be entitled to educational travel benefits for his children who were approaching college age. His desire was that his dependents be able to travel between his duty station and the University of Maryland campus at Munich, Germany. The employee was informed that the applicable regulations authorized travel to a United States-based college, such as the University of Maryland. Based in part on the above interpretation, the employee took an additional 2-year assignment and was reimbursed \$1,624.41 for his dependents' travel to and from Munich.

His employing agency now questions whether reimbursement was proper in view of the statutory requirement that the travel be to an undergraduate college in the United States. The employing agency does suggest that the intent of 5 U.S.C. § 5924 is to make an American education available to dependents of U.S. employees stationed overseas and that the education offered at the University of Maryland's Munich campus "is American in every respect."

The authority for paying the educational travel expenses of dependents of an employee to and from a school in the United States to obtain an American secondary or undergraduate college education is contained in 5 U.S.C. § 5924. That section, entitled "Cost-of-living allowances," authorizes several benefits for employees in foreign areas, including:

"(4) An education allowance or payment of travel costs to assist an employee with the extraordinary and necessary expenses, not otherwise compensated for, incurred because of his service in a foreign area or foreign areas in providing adequate education for his dependents, as follows:

\* \* \* \*

"(B) The travel expenses of dependents of an employee to and from a school in the United States to obtain an American secondary or undergraduate college education \* \* \*."

The regulations implementing 5 U.S.C. § 5924 are found in the Standardized Regulations (Government Civilians, Foreign Areas), Chapter 280. Section 281a provides that educational travel is "travel to and from a school in the United States \* \* \* for college education." Section 281c provides that college education means attending "a full program at the undergraduate level at a university or college \* \* \* located in the United States offering academic courses leading to a degree."

To qualify for educational travel expenses under the above statute and implementing regulations, dependents' travel must not only be for the purpose of obtaining an American college education but it must also be travel to and from a school in the United States. We recognize that travel to the European campus of an American-based college may, in part, serve the purpose of 5 U.S.C. § 5924(4)(B). To conclude that it is sufficient to establish entitlement to travel expense reimbursement, however, would render meaningless the statutory requirement that the travel be to and from a school in the United States. An interpretation that renders the words of a statute mere surplusage is not favored and the legislative history of Section 221 of the Overseas Differentials and Allowances Act, Pub. L. 96-707, September 6, 1960, 74 Stat. 794, offers no support for such a construction. Prior to 1960, only Foreign Service employees had been eligible for dependents' educational travel benefits. Section 221 extended that and other benefits to employees of non-foreign-affairs agencies. The following excerpt from S. Rept. No. 1647, 86th Cong., 2d. Sess. (1960) indicates that Congress specifically contemplated that qualifying dependent travel would be to and from the United States:

"The bill extends to non-foreign-affairs agencies authority to pay the travel expenses of dependents who are transported to and from the United States to obtain a secondary or undergraduate college education, not to exceed one trip each way for each dependent (sec. 221).

"Payment of a child's travel expenses to the United States is authorized for the purpose of securing secondary schooling or college education. \* \* \*

Accordingly, we find that the employee was improperly reimbursed for his childrens' travel to and from Munich.

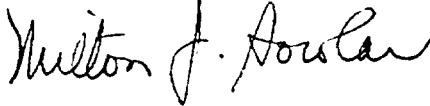
Under 5 U.S.C. § 5584(a) the Comptroller General has authority to waive claims arising out of an erroneous payment of pay or allowances, other than "travel and transportation expenses and allowances and relocation expenses payable under [5 U.S.C.] section 5724a \* \* \*." The finance and accounting officer suggests that educational travel expenses are in the nature of an allowance that is subject to waiver under section 5584.

While section 5924 is generally entitled "Cost-of-living allowances," the travel expenses authorized by subsection 5924(4)(B) for dependents attending college are in addition to the educational allowance authorized by subsection 5924(4)(A). Prior to enactment of the Overseas Differentials and Allowances Act, Foreign Service employees had been authorized distinct entitlement to an educational allowance under 22 U.S.C. § 1131(2)(iv) (1958) and educational travel expenses under 22 U.S.C. § 1136(9) (1958). As explained in S. Rept. No. 1647, supra, Section 221 "consolidated" the travel payment authority and extended it to non-foreign-affairs agencies. Its consolidation under 5 U.S.C. § 5924(4) with the education allowance authority does not change the character of the travel expense payment authorized. The payment in question is an erroneous payment of travel and transportation expenses and, therefore, it is excluded from consideration for waiver under 5 U.S.C. § 5584.

Finally, we have been asked to consider whether this case would be appropriate for reporting to Congress under the Meritorious Claims Act, now 31 U.S.C. § 3702(d). That subsection provides that when a claim is filed with the General Accounting Office that may not be lawfully adjusted by use of an existing appropriation, but which claim, in our judgment, contains such elements of legal liability or equity as to be deserving of the consideration of Congress, it shall be submitted to Congress with our recommendations. The remedy is an extraordinary one and its use is limited to extraordinary circumstances. 53 Comp. Gen. 157 (1973). The cases which we have reported to Congress generally have involved equitable circumstances of an unusual nature which

are unlikely to constitute a recurring problem since to report to Congress a particular case when similar equities exist or are likely to arise with respect to other claimants would constitute preferential treatment over others in similar circumstances. Matter of Daniel Gallup and Henry K. Bearden, B-158847, May 26, 1976.

We are aware of numerous cases involving individuals who incur unreimbursable travel expenses due to a faulty administrative interpretation of a statute and implementing regulation. Accordingly, we do not find that this case presents such elements of unusual legal liability or equity which would justify reporting the claim to the Congress for its consideration under the Meritorious Claims Act.

*for*   
Comptroller General  
of the United States